IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8647 OF 2004

Waman Laxman Thukrul .... Petitioner
Vs.
Sahadoor Kalu Yadav .... Respondent

Shri D.V. Powar for the Petitioner.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 27, 2004

P.C:

1. Heard the learned Advocate for the petitioner. Perused the records.

2. The petitioner challenges the order dated 5-8-2004 passed by the lower Appellate Court dismissing the application for condonation of delay in filing the appeal against the decree passed by the trial Court. While dismissing the application, the lower Appellate Court has clearly observed that the petitioner had failed to give any explanation for the inordinate delay of 153 days in filing the appeal, besides being that the records disclose gross negligence on the part of the petitioner in defending the suit after the filing of the written statement. Though this latter finding is not relevant for the decision relating to the delay in filing the appeal, it does have some relevancy in the

facts and circumstances of the case. The learned Advocate for the petitioner has also produced the certified copy of the roznama which is taken on record and which apparently discloses that the finding regarding gross negligence on the part of the petitioner in defending the suit is clearly borne out from the records. The application for condonation of delay filed in the lower Appellate Court along with the memo of the appeal reveals that apart from contending that the petitioner came to know about the ex parte decree dated 14-10-2003 for the first time on 29-3-2004 pursuant to receipt of the notice in Regular Darkhast No.18 of 2004, there was no explanation given for the delay of 153 days in filing the appeal. It is to be noted that the petitioner filed the written statement in the trial Court on 3-7-2003. The proceedings were attended on behalf of the petitioner till 16-8-2003. However thereafter, neither the petitioner nor anyone on his behalf appeared before the trial Court and after recording the evidence of the respondent, the suit was disposed of on 14-10-2003. It was the case of the petitioner himself in the memo of the appeal that the suit proceeded ex parte against the petitioner on account of negligence on the part of the Advocate for the petitioner to defend the suit. Neither the memo of the appeal nor the application for condonation of delay disclosed any justification for not ascertaining the

progress of the suit by the petitioner himself after the filing of the written statement. It is not the case of the petitioner that the petitioner was unaware of the fact that the petitioner was required to lead evidence in the matter. Obviously the evidence could not have been led by the Advocate for the petitioner in the absence of the petitioner and for that purpose it was necessary for the petitioner himself to appear in person in the Court. There was absolutely no explanation in the application for condonation of delay as regards the absence of the petitioner and failure on the part of the petitioner to pursue the matter, except blaming his Advocate for his alleged negligence. In any case, failure on the part of the Advocate to defend the case of the petitioner, cannot by itself be a justification for delay in filing the appeal. It was necessary for the petitioner to explain the delay of 153 days from the date of the decree till the date of filing of the appeal. In these circumstances, it cannot be said that the lower Appellate Court has exercised its discretion either arbitrarily or there is any improper exercise of its jurisdiction in dismissing the application for condonation of delay. Being so, there is no case for interference in the impugned order in writ jurisdiction and the petition is liable to be dismissed in limine.

3. The matter does not end by merely rejecting the

petition. It is seen that the petitioner has not hesitated to make patently false statements on oath with the sole intention to mislead this Court in order to seek its interference in the impugned order.

4. In the application for condonation of delay filed before the lower Appellate Court, it was the specific case of the petitioner that there was negligence on the part of the Advocate for the petitioner before the lower Court in defending the suit and that, therefore, the petitioner could not be made to suffer and secondly, he came to know for the first time on 29-3-2004 about the ex parte decree dated 14-10-2003 consequent to service of notice in Regular Darkhast No.18 of 2004. In the memo of the petition before this Court the petitioner, however, has alleged thus:-

> "The Petitioner states that the Written Statement filed in the suit does not contain the entire facts and circumstances as stated herein due to mistakes on the part of his Advocate filed hurriedly without any list of documents. However, there are also manipulation of dates in the roznama about the stage of the proceedings and disposal of the suit without proper

> opportunity of being heard given to the Petitioner or his Advocate thereby to pass the ex-parte judgment order and decree dated 14.10.2003 against the Petitioner without any fault and in the absence of the petitioner and his Advocate deserves to be quashed and/or set aside."

The petitioner has further stated in the memo of the petition that:-

> "On 8.8.2003 and 16.8.2003 both days the P.O. of the trial court was on leave and again next date was given as 21.8.2003. However, the matter did not appear on board dated 21.8.2003 to be placed for witness list or list of documents etc. and instead it was told to the Petitioner that the matter is not traceable and if found will be placed on board with intimation for the hearing. The Petitioner was in constant contacts with his Advocate on record by visiting his office and in the court premises but the date of hearing of the matter was never given or told to the Petitioner

> stating that the matter is misplaced, not available and will be taken soon on board when found and that sufficient time is there for the stage of hearing of the suit."

5. The above quoted contents of the petition are to be found in para Nos.6 and 7 thereof and they have been verified by the petitioner in the verification clause as true to his knowledge and belief. Further the said contents are affirmed on oath by the petitioner.

6. It is apparent from the application for condonation of delay which was filed before the lower Appellate Court that the only ground for condonation of delay was that the petitioner was not aware of the proceedings till 29-3-2004 and there was negligence on the part of his Advocate before the trial Court in defending the suit and no other ground was disclosed for the condonation of delay. However, in the memo of the petition by this Court the petitioner has made allegations against the trial Court of manipulating the dates in the roznama about the stage of the proceedings and disposal of the suit. When attention of the learned Advocate for the petitioner was drawn to the said allegations in the memo of the petition, he tried to substantiate those allegations by producing the

certified copy of the roznama. The learned Advocate for the petitioner, however, was unable to point out any manipulation as such in the roznama. According to the learned Advocate for the petitioner, the file of the matter was not traceable on 21-8-2003 and the matter was thereafter taken up for hearing on 18-9-2003 and the same itself discloses the manipulation in the roznama. The term "manipulation" has definite meaning and the Oxford Dictionary has defined the same to mean "control or influence cleverly or unscrupulously or underhand way, or alter or present data so as to mislead". Evidently, the roznama does not disclose any changes having been made in the dates of the hearing after they were communicated to the parties or pronounced in the Court, nor it discloses any change having been made as regards the stage of the hearing of the suit. The roznama also does not disclose misplacement of the file on 21-8-2003. On the contrary, when the matter was taken up on 16-8-2003, the entry in respect of the said date discloses that the Presiding Officer of the trial Court was on leave and, therefore, the matter was posted for filing of the list of witnesses to 21-8-2003. Thereafter the matter was taken on 18-9-2003 on which day neither the plaintiff nor the defendant appeared and no list of witnesses was filed by either of the parties and the matter was thereafter adjourned to 24-9-2003. On 24-9-2003 the plaintiff (the respondent herein) along

with the Advocate was present. The Advocate and defendant (the petitioner herein) were absent. There was no application filed for adjournment. The matter was then posted to 25-9-2003 on which day the plaintiff with his Advocate appeared, however, the defendant and his Advocate remained absent. The deposition of the plaintiff was recorded by permitting to place on record the affidavit of the plaintiff with the documents and the matter was then adjourned to 26-9-2003, and then to 30-9-2003. On 30-9-2003 again the Presiding Officer of the Court was on leave and in the absence of both the parties, the matter was adjourned for cross-examination to 8-10-2003. On 8-10-2003 the plaintiff appeared with his Advocate but the defendant and his Advocate did not remain present. Argument was heard and the matter was adjourned to 10-10-2003 and further to 14-10-2003 on which day the judgment was pronounced and the suit was decreed.

7. The certified copy of the roznama is the zerox copy of the roznama of the said file which apparently reveals the details which are available in the original roznama of the case. The same does not disclose any change having been made in the dates or stages of the hearing nor any sort of manipulation thereof. Being so, the statement by the petitioner in the writ petition about manipulation of the dates by the trial Court in the

roznama about the stage of the proceedings and disposal of the suit is false. It is to be noted that no such allegation was made either in the memo of the appeal or in the application for condonation of delay filed before the lower Appellate Court. Such an allegation has been made for the first time in this writ petition. Obviously the allegation regarding manipulation of the dates in the roznama appears to have been made to mislead this Court regarding the manner in which the proceedings in the suit had proceeded and thereby to make it appear as if the trial Court had acted with the intention to cause prejudice to the petitioner while disposing the matter. Obviously it is not only to mislead the Court but clearly there is an attempt to distort the facts and thereby try to interfere in the administration of justice in as much as that it amounts to scandalise or tend to scandalise and lower the authority of the trial Court apart from misleading this Court regarding the factual aspects of the matter. Being so, there is prima facie case for proceeding against the petitioner for contempt of Court in terms of Article 215 of the Constitution of India read with Section 15 of the Contempt of Courts Act, 1971.

8. In **Re, Arundhati Roy,** reported in AIR 2002 SC 1375 it was held that attempt to tarnish the judiciary would warrant punishment under the Contempt of Courts Act.

Wild allegation against the Court in pleadings and thereby scandalising it certainly is not permissible. In **U.P. Resi. Emp. Co-op. House B. Society and others v. New Okhla Indus. Deve. Authority and another,** reported in AIR 2003 SC 2723 the Apex Court has clearly ruled that any statement of fact on oath, if found to be false, can warrant contempt proceedings.

9. The petitioner is, therefore, hereby issued notice calling for his explanation as to why he should not be prosecuted and punished for contempt of Court for the reasons stated above. He is required to submit his explanation to this Court within four weeks from today. Meanwhile, he is required to execute a personal bond in the sum of Rs.25,000/- and shall also furnish one surety in the like amount within a period of four weeks before the Registrar (Judl.) of this Court. The Registry to register this proceedings for contempt of Court against the petitioner and place the matter before the Bench dealing with proceedings regarding criminal contempt for further proceedings. The memo of the petition along with its annexures and this order shall form part of the contempt proceedings. The petitioner who is present in the Court along with his Advocate takes notice of this order.

10. The certified copy of the roznama taken on record

shall form part of the contempt proceedings.

11. The petition, for the reasons stated above, is dismissed with costs of Rs.5000/-. The costs shall be paid in the Court within a period of four weeks. As regards the contempt proceedings, the Registry to do the needful, as directed above.

12. At this stage, the learned Advocate for the petitioner requests for stay of the order passed today. Question of staying the order does not arise. Request for stay is rejected.

13. Certified copy expedited.